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Time to Update Your Forms!

The Real Estate Commission has been putting a lot of time and effort into developing new forms and making sure that the forms used by licensees are relevant and up to date. As we continue to work on improving the forms used by our licensees we have run into some issues involving the use of extremely outdated forms. If you printed out or copied older forms and still have stacks left it would be greatly appreciated if you would discard those old forms and either print out new forms from our website or request new forms from our office. Our URL is www.state.sd.us/sdrec and our phone line is 773-3600. Please call if you have any questions. Trust us when we say that it will save you time and money in the long run.

Directors Communicate on License Preemption

ARELLO directors voted last month to distribute a strong message to Washington, D.C. that "any federal legislation or regulation which exempts national banks from the jurisdiction of state real estate licensing authorities is directly threatening the integrity of the real estate transaction process, to the detriment of the individual buyer and seller - the consumer." The statement comes in response to the February rule by the U.S. Office of the Comptroller of the Currency and to previous rules by the U.S. Treasury Department and other trends toward consolidation of authority in the capital.

Read More on Page 4

METHAMPHETAMINES DISCLOSURE

Pursuant with "Meth Bill" passed in the last legislative session the South Dakota Real Estate Commission has issued a "Meth Disclosure form" for sellers and lessors. This form will be required as part of all listings and transactions effective July 1st. These forms can be found on our website, www.state.sd.us/sdrec, under forms and supplemental guides as well as in this newsletter. If you have any questions about this form or the bill please feel free to contact our office.

From the Director's Desk



With the onset of summer upon us, so is the implementation of the new "Meth Bill". Effective July 1st, sellers and lessors of residential real estate must disclose, in writing,

their knowledge of the existence of any prior manufacturing of methamphetamines. This disclosure must be given to a potential buyer prior to the signing of a written offer to purchase. The disclosure forms are included in this issue and may be copied. The forms are also available from our website at www.state.sd.us/sdrec.

On behalf of the Commission and staff, I would like to welcome Dennis Eisnach to the Commission. Dennis was recently appointed by Governor Rounds to fill the vacancy left by public member, Nancy Ekstrum. Dennis comes to the Commission with a wealth of experience, as detailed in his bio on page 4 in this newsletter.

At its last meeting, the Commission decided that the responsible broker may authorize associates to sign closing statements. The Commission also directed the staff to send all renewals with a list of those renewing to the responsible broker for their handling with the licensees. We also intend to include errors and omissions insurance renewal forms with the license renewals.

As of this writing, there are 262 active salespersons who will have to upgrade to broker associate by January 1, 2005 if they wish to remain on active status. If you are one of these individuals, I suggest you begin scheduling your coursework of broker-level courses. Please don't wait until the last minute to complete your coursework. By doing so, this could result in your license being placed on inactive status if the class you need is cancelled or filled.

Commission auditors have been running into problems balancing trust accounts. The law states that trust accounts must be

balanced monthly. A trust account reconciliation includes three balances, the most important of which is the ledger balance. Once the ledger is totaled, then the check register balance is compared to the ledger total, which should be equal. The last step is reconciling the bank statement to the ledger total and check register balance. Many offices are only reconciling the check register and bank statement. If the trust account ledger is not being included in the monthly reconciliations, the office has no idea if the trust account is truly in balance. When the auditors find the ledger total not in balance with the check register and bank statement, it can take the broker a considerable amount of time to find an error. By doing a true trust account reconciliation on a monthly basis, the broker will save time and avoid a complaint being filed.

By the time you read this, the Fourth of July will have passed. I hope you had a safe, memorable day and that you took a moment to reflect on the many freedoms we enjoy. In the words of Dwight D. Eisenhower, "Only our individual faith in freedom can keep us free."

DjN

A Letter from the Chairman



Recent issues coming before the commission underscore the term responsible broker and the need for discussion.

Chapter 36-21A-1, #16 states,

"Responsible broker," any person holding a broker's license issued pursuant to the chapter who is responsible for the real estate activities conducted by those licensees acting in association with or under the auspices of the responsible broker. It has become clear that some responsible brokers have licensees under them that are conducting real estate activities not under the auspice

or with the knowledge of that responsible broker. Obviously, this is contrary to our license law and perhaps could lead to unwanted litigation from the public.

Another issue highlights the need for responsible brokers and their agents to be well-advised to read the title insurance commitment prior to closing so as to spot an "red flags" that might be important to the parties to the transaction, especially the purchases. For instance, the seller property disclosure statement asks the question, "are you aware of any current or pending litigation, foreclosure, zoning, building code or restrictive covenant violations notices, mechanic's liens, judgments, special assessments, zoning changes or changes that could affect your property?" A seller may answer "no" to this question, when, in fact, there is something of this nature affecting the property. The title insurance commitment may reveal something contrary to the answer "no" by the seller that the purchaser may regard as being undisclosed and detrimental to following through on the purchase. It is the duty of the seller to answer the questions honestly as they themselves can and agents should refrain from recommending answers.

Finally, on the subject of responsible brokers, chapter 36-21A-71. (14) speaks to the responsibility of brokers to provide closing statements dated and signed by the brokers detailing money received and disbursed in a transaction. The practice of utilizing title and closing companies to handle closings does not dismiss the broker from being responsible for the accuracy and proper handling of the closing transaction.

**Loren Anderson,
Chairman**

Visit us on the Web

www.state.sd.us/sdrec

You can find a plethora of information on our web page from forms and supplemental guides to our frequently asked question section. Just type in the above URL and save it as a favorite to have all of that information at your fingertips 24hrs a day.

New Licensees

The South Dakota Real Estate Commission would like to welcome the following new licensees.

Broker

Braaten, Norris - West Fargo, ND
Folk, Steven - Sioux Falls
Garman, John - Buffalo, WY
Hamaty, Jr. Nicholas - Delano, MN
Hill, Arne A - Brooklyn Park, MN
King, Jerry C - Gadsden, AL

Broker Associate

Anderson, Diane J - Brandon
Bachand, Wayne A - Sturgis
Berry, Kathryn J - Rapid City
Bamsey, Luverne E - Sioux Falls
Bosco, Sherry A - Spearfish
Brende, Thomas O - Sioux Falls
Christianson, Andrea G - Sioux Falls
Daale, Veronica "Roni" L - Fairview
Delgehausen, Senta - Sioux Falls
Dixon, William F - Rapid City
Dohman, Cami J - Spearfish
Ehlers, Eddie D - Sioux Falls
Ehlers, Kim M - Sioux Falls
Endres, Terry L - Watertown
Ferwerda, Harlan D - Yankton
Frannea, Michael J - Sioux Falls
Fraser, William (Larry) - Spearfish
Fritza, Deborah L - Sioux Falls
Giedd, Mandy J - Brookings
Gresh, Sandra L - Britton
Griffin, Hannah M - Rapid City
Hahn, Samuel L - Sioux Falls
Hannah, Jr., Erwin D - Spearfish
Hanson, Vincent B - Crooks
Harr, Andrew M - Sioux Falls
Hefty, Danette J - Rapid City
Hernandez, Ignacio A - Sioux Falls
Hoffman, Brittnee L - Rapid City
Hovland, Kathleen A - Sioux Falls
Jamison, Terence A - Sioux Falls
Jeitz, Merlin - Watertown
Lee, Meredith A - Pierre
Lesselyoung, Michael B - Sioux Falls
Matson, Vicky A - Mobridge
Mayo, Shannon L - North Sioux City
McDonnel, Daniel D - Sioux Falls
Midland, Jean A - Sioux City, IA
Paquette, Edward - Vermillion
Petit, Kim M - Sioux Falls
Petty, John P - Rapid City
Pospishil, Scott D - Yankton
Rathbun, Carisa L - Rapid City
Rost, Wendy M - Sioux Falls
Schwalbe, Kelly J - Sioux Falls

Sevold, Colleen E - Sioux Falls
Snyder, Barbara A - Hill City
Stroud, Rachel R - Rapid City
Swanson, Timothy M - North Sioux City

Lic. Home Inspector

Welch, Michael V - Yankton

Reg. Home Inspector

Donat, Gregory A - Hot Springs

Salesperson

Flammang, Roxanne L - Sioux City, IA
Hathorn, V. Anita - Gadsden, AL
Hughes, Jeb T - Sundance, WY
Johnson, Malea L - Sioux City, IA
Potter, Patricia - Sioux City, IA
Rademacher, Marjean M - Ortonville, MN
Simmons, Tracy - Sioux City, IA
Sissel, Alesia K - Sioux City, IA
Strotheide, Doug - Sundance, WY
Welch, LaNay R - Sioux City, IA

Timeshare Agent

Arnot, William C - Rapid City
Paulson, Megan R - Lead
Rafuse, James L - Rapid City
Volk, Amber L - Rapid City

Disciplinary Action

The following disciplinary actions have become effective since the last report in the newsletter, excluding cases currently on appeal. A stipulation and Assurance of Voluntary Compliance is a settlement agreement between licensees and the real estate commission and this constitutes neither an admission nor a denial of any violation.

Cathy Eaton, Spearfish broker associate. Stipulation and Assurance of Voluntary Compliance to the accusation of the lack of diligence in failing to ascertain the nature and extent of the covenants and restrictions upon ownership of the lot subject to a purposed transaction. Penalty of \$350 fine and 6 hours of continuing education in the law of agency. Alleged violation of SDCL 36-21A-1, 36-21A-30 and 36-21A-32.

Fred Ening, Spearfish broker. Stipulation and Assurance of Voluntary Compliance to the accusation of lack of diligence in failing to ascertain the nature and extent of the covenants and

restrictions upon ownership of the lot subject to a purposed transaction. Penalty of a \$350 fine and 6 hours of continuing education in the law of agency. Alleged violation of SDCL 36-21A-1, 36-21A-30 and 36-21A-32.

Merle Miller, Sioux Falls broker. Stipulation and Assurance of Voluntary Compliance to the accusation of failure to disclose in writing to a seller or buyer the types of agency and broker relationships the broke is offering to that person. Penalty of a \$250 fine. Alleged violations of SDCL 36-21A-147.

Shirley Sneesby, Deadwood broker associate. Stipulation and Assurance of Voluntary Compliance to the accusation of advertising and represent that she was in fact a real estate broker when in fact she is a salesperson. Penalty of a \$500 fine, costs of \$369.86 and 12 hours of continuing education in license law. Alleged violations of 36-21A-71; (4), (15) & (32).

Gary Neiderworder, Rapid City broker. Stipulation and Assurance of Voluntary Compliance to the accusation of knowledge of misrepresentations through advertising and represent that a licensee was in fact a real estate broker when in fact the licensee is a sales person. Penalty \$500 fine, costs of \$369.86 and 12 hours of continuing education in license law.. Alleged violations of 36-21A-71; (4), (15) & (32).

Wayne Mundt, Sioux Falls broker. Findings of Fact, Conclusions of Law, and Order stated that by his own admission, did not have a written purchase agreement or ownership of a property he attempted to sell; did not secure a written agency agreement with client. Penalty \$1,500 fine, 24 hours of continuing education — 12 in the area of agency law and 12 in the are of contract law, costs of \$5,293.42 and license suspended for a six month period. Violations SDCL 36-21A-71(9) (2) (15) (32) & SDCL 33-21A-130. This decision was upheld by the Supreme Court of South Dakota.

Governor Rounds Appoints Dennis Eisnach



Governor-Rounds appointed Dennis Eisnach of Pierre South Dakota to the Real Estate Commission in early April. He will be

filling the seat vacated by Nancy Eckstrum who stepping down from the commission.

Dennis was born in Estelline, South Dakota. After graduating from high school Dennis attended the South Dakota School of Mines and shortly there after he served in the United States Marine Corps. Dennis was spent 20 years of his life serving as a law enforcement agent for the Rapid City Police Department and the South Dakota Highway Patrol. Dennis found a home in Pierre SD, where he has spent the last 34 years. He is happily married and has three daughters.

Dennis is still serving the people of South Dakota as the Mayor of Pierre. He was elected to the office in 2002.

Dennis is extremely active in many different facets of public service. He was elected to the Public Utilities Commission for a six year term, two of which he served as president. He is Chairman of the Governing Board at St. Mary's Healthcare Center in Pierre. He is currently serving as a member of the State Executive Council for AARP and Dennis was at one time the acting President of the South Dakota chapter of AARP. He is also on the Board of Directors for Capital University Center.

As you can easily see Dennis is a very busy man and we are happy to have such a dedicated member of the public on the Commission. We would like you to assist is welcoming Dennis to the Commission.

ARELLO's Statement on state/territory level license preemption

The Association of Real Estate License Law Officials comprises real estate regulators from 48 states and the District of Columbia, Puerto Rico, Guam and the Virgin Islands, as well as numerous countries and territories on almost every continent in the world. Our mission is to support jurisdiction in the administration and enforcement of real estate license laws put in place for the purpose of protecting public interest.

It is ARELLO's position that any federal legislation or administrative direction must no contain any provision that exempts national banks or their operating subsidiaries from state or territorial real estate licensing laws and regulations now in place in each jurisdiction. This relates both to any possible exemption for some segment of real estate-related activity by national banks and to any federal preemption of jurisdiction authority over the banking industry from the state and territorial level. We are very concerned that one or both of the above would be the result of any decision that real estate is primarily financial in nature.

Licensing agencies in the United States all have a long -standing, comprehensive statutory and regulatory framework to protect consumers in the real estate transaction. These laws and regulations, which are administered by real estate commissions, protect and regulate the sale of real estate and license those brokers and agents who facilitate the process. These commissions, in many cases, promulgate rules and regulations and advise the legislatures on changes necessary to reflect the state-specific practices. In all cases, consumers have a strong set of laws. Real estate commissions continually monitor the business or real estate and investigate alleged illegal or fraudulent real estate practices. In addition, real estate commissions are charge with prescribing educational requirements, both initially and on-going, for real estate licensees.

Any federal legislation or regulation which exempts national banks from the

jurisdiction of state real estate licensing authorities is directly threatening the integrity of the real estate transaction process, to the detriment of the individual buyer and seller -- the consumer.

On February 12, 2004, the Office of the Comptroller of the Currency (OCC), issued a final rule that identifies types of state laws that are preempted for national banks and their operating subsidiaries. The types of state real estate lending laws that are preempted include, but are not limited to, licensing, registrations, filings, or reports by creditors. National banks and their operating subsidiaries are exempt from state law that impose license law requirements on them in order to engage in an authorized activity.

Since the passage of the Gramm-Leach-Bliley Act, national banks have attempted to gain entry into the real estate brokerage business. To date, though asked, the OCC has not issued a written statement indicating that state real estate licensing laws would not be preempted should national banks or their operating subsidiaries be allowed to engage in real estate brokerage activities.

ARELLO's Board of Directors voted late last month to communicate its strong opposition to any federal preemption of state or territorial real estate licensing requirements. We recommend action to keep the highest level of consumer protection in place and action to oppose any effort to provide exemption in this area.

A Guide for Distance Learners

By Robert A. Meyer, Ph. D.

Quite often ARELLO is asked what advice we can offer to distance learner students. In response to those questions we offer these tips you may want to include with your distance education materials.

Ten Rules For Distance Learners

- Read the course introduction materials thoroughly. Distance education courses are often unique in their delivery formats. The introductory material will explain how the course operates and how to

proceed through the course in the most efficient manner. Do not skip this material. Understand the course requirements.

- Read the learning objectives for each unit. These help outline the material that is presented in each unit and presents the “roadmap” for your study.
- Taking notes while you go through the course can help you retain important points and serve as a review for courses that require a final exam. Summarize the main points you have learned and make notes on those items you missed or had difficulty mastering. It is often helpful to go back over the unit and formulate questions based on items you have identified as important.
- Asking yourself question during distance education studies helps you study to be active learning. Turning the unit objectives into questions before you start the unit often helps stimulate active learning.
- Set time aside on a planned basis for your study. Distance education in many ways requires more personal discipline than classroom study. Make sure you have certain “times for class” each week. Ensure that your study time is in a quiet environment where you will not be disturbed. It is easy to procrastinate in distance education.
- Reward yourself with short breaks. In general, after you have studied for an hour it is wise to take a break. Suggestions range from taking a coffee or tea break to some physical activity to keep you alert and stimulated.
- When you encounter technical difficulties with course operation, make sure you use the specific telephone number for technical assistance. Contacting your instructor will often result in delays in resolving technical problems. Remember, in most distance education courses there is separate contact for technical help.
- When you do not understand the material, contact the instructor. When the contact is made via e-mail, you should expect a reply within a

reasonable time-frame. In rare cases where an instructor does not reply, you should contact the provider and explain you have contacted the instructor and have not received a reply.

- Know how long you have to complete the course. The time will be stated in the course introduction.
 - Do your own work.
- (Reprinted with permission from ARRELO)

Important Notice Regarding Inactive Status and E&O Insurance Coverage

If you place your license on inactive status, you need to be aware of special considerations regarding your errors and omissions insurance coverage. The current South Dakota group policy provides: “In the event an **Insured’s** license is placed on inactive status during a period in which the **Insured** has paid the applicable premium, the policy will remain in effect for the remainder of the **Individual Policy Period** as if the license has not been placed in inactive status, regardless of whether the license is re-activated, except that coverage will not be provided for acts, errors or omission of the insured which occur during the period when the license was in an inactive status.

The current group policy is written on a “claims-made and reported” basis. This means that coverage is provided only for those Claims that are made against you and reported to the insurance company in writing during the policy period. If you place your license on inactive status you may still be eligible for limited coverage after the policy period. The current group policy provides: “In case of cancellation or non-renewal because a **Licensee** retires, places license on inactive status or allows license to expire, the policy will apply to **Claims** first made against the insured and reported up to ninety days (90) after effective date of cancellation or non-renewal. Said ninety (90) day period will be hereinafter referred to as the Automatic Extended Reporting Period.

After you place your license inactive, you are not required by law to maintain

your coverage. However, a prudent individual will maintain coverage in order to avoid personal liability for claims made after expiration of the policy period. An Optional Extended Reporting Period Coverage, commonly known as “Tail Coverage” may be purchased to cause the policy to apply to Claims first made and reported up to three (3) years after the effective date of cancellation or non-renewal. Tail coverage can only be purchased within ninety (90) days after the licensee’s policy has terminated. Tail Coverage is important because so many professional liability Claims are not made until months after the subject transaction occurs, and even some may even be made years after the transaction.

The current group policy provides:

Coverage afforded by the Automatic and Optional Extended Reporting Periods:

1. Shall apply solely to **Claims** arising from a negligent act, error or omission:
 - a. committed or alleged to have been committed subsequent to the **Retroactive Date** and
 - b. committed or alleged to have been committed prior to the effective date of cancellation or non-renewal, and
 - c. which are otherwise insured under all the other terms, conditions and exclusions of this policy.
2. Shall not apply to any **Claim**, which is insured by any other policy of insurance, nor as excess above such other policy of insurance.
3. Nothing in Paragraphs A or B shall serve to increase the Limits of Liability as provided in Insuring Agreement II or the Supplementary Payments as provided in Section IV. The Limits of Liability for any Extended Reporting Period shall be a part of, and not in addition to, the Limits of Liability listed on the Declarations.

The current group policy requires that the Claim be reported to the insurance company, in writing, during your policy period or any extended reporting period. The Insured must give written notice by submitting a completed Notice of Claim Form to the company as soon as possible after the claim is first made but in no

event more than ninety (90) days after the Insured becomes aware of such a Claim. Such a written notice shall include the name of the licensee and shall include the time, place and details of the Claim. Failure to report a Claim in a timely manner could jeopardize the coverage provided by the policy. RISC utilizes a simple Claim reporting form which is located on its web site www.risceo.com, however, for assistance in reporting a claim please call (800) 637-7319.

This information is for illustrative purposes only and is not a contract. It is intended to provide a general overview of the products and services offered. Only the policy can provide the actual terms, coverages, amounts, conditions, and exclusions. This program is only available in South Dakota.

Attention Home Inspectors

If you are listed as a registered home inspector and have completed your 100th inspection do not forget to contact the South Dakota Real Estate Commission to have your license upgraded to a licensed home inspector status.



In Memoriam

The South Dakota Real Estate Commission extends it's sincerest sympathy to the families and friends of the following licenses who recently passed away:

Amy Mowerer - Rapid City
Jerry Peterson - Mobridge

APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Revenue and Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquiries can be directed to Sherry Bren, Program Administrator, 445 East Capitol, Pierre, SD 57501, 605-773-4608

Appraiser Certification Program Mission – Purpose – Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

USPAP Q & A March 2004, Vol. 6, No. 3

Question 1. I accept assignments from an Appraisal Management Company (AMC) which has informed me they are an authorized agent for the lenders they represent. The AMC does not want me to list their name as the client, and asks that I only list the name of the lender they are representing. Since USPAP says the appraiser's client is the party who engages the appraiser, is it ethical to omit the AMC's name as the client on my reports?

Question 2. Recently I have considered maintaining only electronic workfiles (i.e. saving only electronic versions of my reports and supporting data, and scanning any paper documents used so that copies may be stored on electronic media). Is this prohibited by USPAP?

USPAP Q & A April 2004, Vol. 6, No 4

Question 1. My client has asked that I provide a draft of my appraisal report prior to issuing the report in final form. Is this permitted under USPAP?

Question 2. I was asked to appraise a single-family residence for refinancing. I am aware that the property had been previously listed but did not sell. During my data investigation and analysis, I noted that the owner's "estimate of value" was \$375,000. When I looked up the listing history, I found it had been withdrawn from the market at the asking price of \$325,000. What are my obligations under USPAP regarding a withdrawn or expired listing of the subject property?

USPAP Q & A May 2004, Vol. 6, No 5

Question 1. When an appraiser is asked to value a significantly large group of similar or like items, does USPAP require that the appraiser follow STANDARD 6 for mass appraisals?

Question 2. Is there any connection between the application of STANDARD 6 for mass appraisals and the application of a blockage discount?

Question 3. Does USPAP offer guidance in how to calculate an appropriate blockage discount?

Answers to the above questions can be found at: www.appraisalfoundation.org

Licensee Rosters

Rosters of active appraisers in three different formats (alphabetical by last name, town and license number) are available at the Appraiser Certification Program Website.
www.state.sd.us/appraisers

2004 Renewal

The 2004 renewal applications will be mailed the first week in July. In order to renew your certificate for state-certified general, state-certified residential, state-license or state-registered appraiser you must submit the completed application and the applicable renewal fees by **August 17, 2004**.

Review of Cases As of May 20, 2004

For the period January 1, 2004 through May 20, 2004 there have been six (6) upgrade applications, one (1) new application claiming experience, and five (5) complaints submitted to the Department. Upgrade: Four (4) upgrades are pending and two (2) upgrades have been issued. Complaints: Four (4) complaints are pending and one (1) complaint has been settled through agreement. (The complaints were filed by three (3) consumers, a lender and an appraiser.)

For the period January 1, 2003 through December 31, 2003 there have third leg of a flip can be discovered when the seller in the sale agreement is not the owner of record. Verification of the terms of sale with brokers may also reveal multiple transactions on the same property.

Experienced appraisers can recognize anomalies in the market and will avoid relying on sales that do not reflect the prevailing market. If an appraiser is asked to value a property in an area that is unfamiliar to them they should become familiar with the area and the market for

been seven (7) upgrade applications, three new applications claiming experience, and five complaints submitted to the Appraiser Certification Program. Upgrade: Six (6) upgrades have been issued and one (1) upgrade is pending. New applicants claiming experience: Three new certificates have been issued. Complaints: Five (5) complaints were disposed of by settlement agreement. (The complaints were filed by an attorney, an appraiser, anonymous, and two consumers.)

New Licensees April and May 2004

Julie R. Yager, State-Registered – Colome, SD
Rikki L. Drewes, State-Registered – Pierre, SD
Gregory L. Paquette, State-Registered – Vermillion, SD
Brock J. Rule, State-Certified General (reciprocity) – Independence, MO
Chev M. Hackett, State-Registered – Fort Pierre, SD
Richard L. Clark, Certified-General (reciprocity) – Portland, OR

Flipping, one more time...

[This article has been reprinted from the Iowa Professional Licensing Division Newsletter, Vol. 5, #4 Real Estate Examining Board]

What does USPAP say about property flipping?

Answer: The phrase “property flipping” is commonly used to describe the transfer of property where fraud is used to obtain inflated prices and loans.

It is important to note that “property flipping” is distinctly different than the

the subject property. The Comment to the COMPETENCY RULE states the following:

The concept of competency also extends to appraisers who are requested or required to travel to geographic areas wherein they have no recent appraisal experience. An appraiser preparing an appraisal in an unfamiliar location must spend sufficient time to understand the nuances of the

usual activity of buying and selling property at a profit. The market for real estate is imperfect. Knowledgeable and honest parties seek opportunities to acquire a given property at a favorable price with the objective of reselling that property at a profit. Such activity does not constitute flipping as there is no intent to mislead or defraud.

USPAP does not describe property flipping, itself, but it does prohibit appraisers from communicating assignment results in a fraudulent or misleading manner. The ETHICS RULE is explicit about any kind of activity designed to mislead or defraud—as specified in the Conduct section of the ETHICS RULE.

An appraiser must perform assignments ethically and competently in accordance with these standards, and must not engage in criminal conduct.

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

Since many flipping schemes rely on appraisals, what kinds of things should appraisers look for to avoid being entangled, inadvertently in such schemes?

Answer: There are a number of actions appraisers can take to safeguard against over-valuations. Standards Rule 1-5 requires that appraisers analyze any current Agreement of Sale, option, or listing of the property, when such information is available. Many lenders require that Agreements of Sale be provided to the appraiser for their review and analysis. Sometimes the second or

local market and the supply and demand factors relating to the specific property type and the location involved.

Standards Rule 1-4 requires the appraiser to collect, verify and analyze information applicable to the appraisal problem. Knowing the conditions of sale, financing and motivations of the buyer helps the appraiser to adjust sales to the market and avoid the affects of inflated prices. Standards Rule 1-2(e) requires that the appraiser identify the

characteristics of the property that are relevant to the purpose and intended use of the appraisal including its location and physical, legal, and economic attributes. Knowledge of these attributes plays a critical role in the valuation process. Appraisers should exercise care in identifying these attributes noting any adverse condition which could impact the property's value.

Is there anything I can put into a report that would protect me from being entangled in a flipping scheme?

Answer: There are safeguards in USPAP that pertain to reporting as well. It is good to review the first principle in all the reporting standards of USPAP: *to clearly and accurately set forth the appraisal in a manner that will not be misleading*. Providing candid and appropriate disclosures in the report serves to limit the appraiser's liability and inform the client of important issues that qualify the conditions of the appraisal.

Standards Rule 2-2(a-c)(ix) is a good example of where appropriate disclosures help appraisers avoid costly mistakes and subsequent criticism.

When the purpose of an assignment is to develop an opinion of market value, a summary of the results of analyzing the information required in Standards Rule 1-5 is required. If such information was unobtainable, a statement on the efforts

undertaken by the appraiser to obtain the information is required. If such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance is required.

This Standards Rule requires that the appraiser disclose significant information specified in Standard Rule 1-5 if it is available or what steps were taken to obtain the information in the event that it was not obtained. The first type of disclosure protects the appraiser from over-valuation when the information is available and the second, if addressed properly, should convince third parties that the appraiser exercised reasonable care in the performance of the assignment.

Is the supervisory appraiser who signs an appraisal report that was developed for use in a property flipping transaction, responsible for the appraisal and contents of the appraisal report?

Answer: Yes, SR 2-5 states: "An appraiser who signs a real property appraisal report prepared by another in any capacity accepts full responsibility for the appraisal and the contents of the appraisal report."

South Dakota Real Estate VIEW

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